

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

QUINN AARON KLIEN,)	
)	
Plaintiff,)	
vs.)	NO. CIV-12-1292-HE
)	
H. A. RIOS, <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

Plaintiff, a, a state prisoner appearing *pro se*, filed this § 1983 action, alleging violations of his constitutional rights. Pursuant to 28 U.S.C. § 636(b)(1)(B), the matter was referred to Magistrate Judge Shon T. Erwin for initial proceedings. He has recommended that plaintiff's request to proceed *in forma pauperis* be denied and that he be required to pay the full \$350.00 filing fee. The magistrate judge concluded that the three strikes provision of 28 U.S.C. § 1915(g) was applicable¹ and that plaintiff had failed to demonstrate that the statute's imminent danger of serious physical injury exception applied.² The court agrees that plaintiff did not allege he is presently in danger of serious physical injury.

¹In his Report and Recommendation, the magistrate judge stated that plaintiff had not appealed the dismissal in *Klein v. Anderson*, No. CIV-12-464-HE (W.D. Okla. April 26, 2012). Plaintiff did appeal the dismissal. The Tenth Circuit dismissed plaintiff's appeal for lack of prosecution on October 23, 2012, and the mandate was issued the same day. However, at the time the Report and Recommendation was issued, there was a filing error and the docket sheet did not include the Circuit's October 2012, order and mandate.


²The magistrate judge included, as one of the three required strikes, a dismissal with prejudice entered in *Klein v. Gatlin*, No. CIV-98-149-MB (N.D. Okla. Feb. 24, 1998). Docket sheet entry #3 reflects that the dismissal was to be flagged as a "prior occasion." 28 U.S.C. § 1915(g). The court notes that a dismissal with prejudice entered in another Northern District case, *Klein v. Gatlin*, No. CIV-98-150-TCK (N.D. Okla. February 24, 1998) also was flagged as a "prior occasion." Both ripened into strikes.

Plaintiff has objected to the Report and Recommendation. Although he challenges the magistrate judge's determination that he has three strikes,³ he fails to explain why that determination is in error. The court has considered the cases the magistrate judge relies on and concurs that plaintiff has accumulated three strikes.

Accordingly, the court adopts Magistrate Judge Erwin's Report and Recommendation.⁴ Plaintiff's motion for leave to proceed *in forma pauperis* [Doc. #2] is **DENIED**. Plaintiff has until **February 22, 2013**, to pay the \$350.00 filing fee or this action will be dismissed without prejudice.

IT IS SO ORDERED.

Dated this 25th day of January, 2013.



JOE HEATON
UNITED STATES DISTRICT JUDGE

³Plaintiff also makes unsubstantiated allegations that the magistrate judge is biased and should recuse. However, adverse rulings by themselves do not demonstrate judicial bias.

⁴Citing *Klein v. Whetsel*, No. Civ. 05-1494-T; *Klein v. Victorian*, No. CIV-12-565-HE; *Klein v. Keefe Inc.*, No. CIV-12-142-HE; *Klein v. GEO*, No. CIV-12-124-HE; *Klein v. Lincoln County Dist. Ct.*, No. CIV-05-838-T, the magistrate judge noted that plaintiff "has a pattern of and practice of bringing civil actions in this Court, only to voluntarily dismiss them after significant time and effort has been expended by the Court and the parties." Report and Recommendation, p 4 n.2.